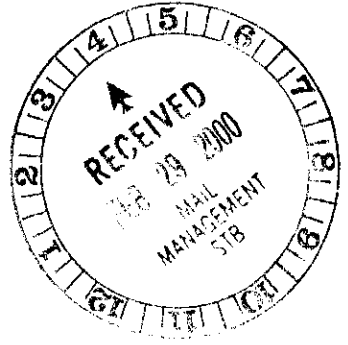




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February 29, 2000



Via Hand Delivery

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

RECEIVED  
Office of the Secretary

FEB 29 2000

Post at  
1925 K Street, N.W.

Re: STB Ex Parte No. 582, *Public Views on Major Rail Consolidations*

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an executed original and ten (10) copies of the Comments of OG&E Electric Services. Also enclosed is a 3.5-inch diskette containing a WordPerfect 7.0 formatted copy of this filing. An extra copy of the filing is enclosed for stamping and return to our office.

Should you have any questions concerning this filing, please do not hesitate to contact the undersigned. Thank you for your cooperation and assistance in this matter.

Respectfully submitted,

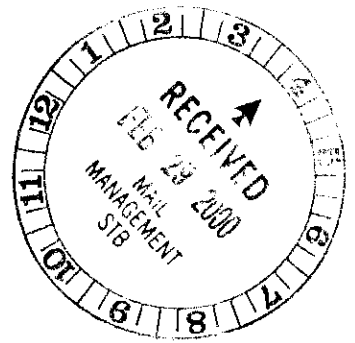
Nicholas J. DiMichael

*Enclosures*

ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, N.W., Suite 750, Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Ex Parte 582

**PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS**

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**COMMENTS**

submitted on behalf of

**OG&E ELECTRIC SERVICES**

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Office of the Secretary

**FEB 29 2000**

Part of  
Public Record

OG&E Electric Services ("OGE") respectfully submits these comments in response to the order of the Surface Transportation Board served February 17, 2000. OGE commends the Board for initiating proceeding. OGE believes that, as the rail industry has consolidated particularly in the past five years, federal regulators are well advised to review the policies applicable to the rail industry, and in particular to rail mergers, to determine if the policies applicable to past circumstances are appropriate for the challenges facing the customers and providers in the industry in the future. Accordingly, OGE welcomes this opportunity to submit to the Board its views regarding certain factors that the Board should evaluate in future major rail consolidations.

**I. Identity and Interest of OG&E**

OGE is an electric utility company with headquarters in Oklahoma City, OK. It has about 696,000 retail customers in Oklahoma and western Arkansas, and additional wholesale customers throughout the region. OGE owns and operates the Muskogee Generating Station located at Fort Gibson, OK and the Sooner Generating Station located at Red Rock, OK, both of which are coal-fired electric generating facilities

utilizing coal from the Powder River Basin in Wyoming. The Muskogee Station is served single line by the Union Pacific Railroad Company ("UP"), and the Sooner Station is served in joint line service by the UP connecting with the Burlington Northern Santa Fe Railway Company ("BNSF"). OGE burns approximately 10 million tons of coal per year in total at these plants, and is highly dependent upon rail service for the delivery of fuel for the generation of its supply of electricity.

OGE has taken an active interest in Interstate Commerce Commission ("ICC") and STB rail merger proceedings. In 1995, it participated actively in the merger proceeding involving the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company, and was the subject of a pro-competitive condition imposed by the ICC in that case, F.D. No. 32549, *Burlington Northern Inc., et al – Control and Merger – Santa Fe Pacific Corporation, et al*, to preserve rail-to-rail competition at OGE's Sooner Generating Station.

## II. OGE Has Serious Concerns Regarding Future Rail Mergers

In 1980, the year of the passage of the Staggers Act, there were over 40 Class I railroads. As late as 1994, the Association of American Railroads listed 13 Class I carriers -- a significant reduction from the number that existed in 1980, but still a substantial number of competitors in the rail marketplace. But by the end of 1999, just five major Class I rail carriers held the vast preponderance of track miles, traffic, and revenue; and a merger of two of these remaining five carriers has now been proposed.

OGE's concerns relating to rail mergers are in two areas: competition and service. In the area of service, OGE is well aware that past rail mergers have been accompanied by serious service disruptions. OGE, as a large western rail shipper, has experienced firsthand the effects of service disruptions accompanying mergers in 1996 and 1997-98. While merging rail carriers have promised better service, they have frequently had severe

difficulty in delivering on those promises. Thus, the Board should give any future rail mergers close scrutiny to determine the extent to which the promised benefits of any particular future merger are likely to be realized. Similarly, the Board needs to closely analyze not only the competitive impact of any proposed merger, but also the likely “downstream” competitive impacts of future mergers of still other carriers that would likely merge in response to the merger of two or more industry participants.

### III. Key Analytical Questions for the Board In Any Future Merger Proceeding

OGE believes that the Board needs to carefully examine the following questions, among others, in any future rail merger:

- a) How realistic are the claimed benefits of the merger, particularly in light of the experience of past mergers?
- b) What is the competitive impacts of a proposed merger, particularly with respect to the closing of neutral rail routings, the dominance of carriers over broad rail corridors and in specific commodity markets, and on the merging railroads’ market power generally?
- c) What is the likelihood of further rail mergers in response to the proposed merger, and what will be the competitive impacts of such mergers?
- d) How likely is the possibility of service disruptions as a consequence of the proposed merger? What have the proposed merging carriers done to prevent such harm and to indemnify affected shippers if such harm does occur?
- e) What are the proper competitive and regulatory conditions that must be imposed upon a proposed merger to prevent the expected harm from occurring? If the expected harm cannot be completely alleviated, should approval of the proposed merger be denied?

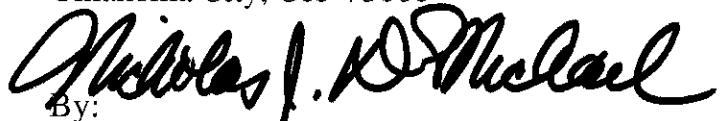
f) What is the level of economic regulation that will produce the most competitive rail industry possible?

III. Conclusion

OGE respectfully requests the Board to consider the views expressed herein, and thanks the Board for the opportunity to make itself heard in this important proceeding.

Respectfully submitted

OG&E ELECTRIC SERVICES  
321 North Harvey St.  
Oklahoma City, OK 73101

A handwritten signature in black ink, reading "Nicholas J. DiMichael". The signature is written in a cursive, flowing style.

By:  
Nicholas J. DiMichael  
Donelan, Cleary, Wood & Maser, P.C.  
1100 New York Avenue, NW, Suite 750  
Washington, DC 20005

*Attorney for OG&E Electric Services*

February 29, 2000